FILE COPY

FILED
AUG 3 194
CHARLES ELMORE CR

IN THE

Supreme Court of the United States

OCTOBER TERM 1949

No. 229

CAPITAL AIRLINES, INC., *Petitioner,*

against

RICHARD I. EDWARDS and
JAMES A. YOUNG, *Respondents*

PETITION OF CAPITAL AIRLINES, INC. FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

CHARLES H. MURCHISON
ROBERT B. HANKINS
JOSEPH K. GILLIGAN
Attorneys for Petitioner,
Capital Airlines, Inc.

STOCKTON, ULMER & MURCHISON
1016 Ring Building
Washington 6, D. C.
Of Counsel

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX.

	Page
PETITION FOR WRIT OF CERTIORARI	1
STATEMENT OF THE MATTER INVOLVED	2
JURISDICTIONAL STATEMENT	6
QUESTIONS PRESENTED	6
REASONS FOR ALLOWANCE OF THE WRIT	6
BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIOARI	9
SPECIFICATION OF ERRORS	9
SUMMARY OF ARGUMENT	10
ARGUMENT	11
Jurisdiction of the Federal Courts over the controversy in issue is completely lacking since Congress vested complete and final authority to settle such controversies in the System Board of Adjustment	11

TABLE OF CASES CITED.

Brotherhood of Railroad Trainmen v. *Texas & P. Ry. Co.*, 159 F. (2d) 822 (CCA-Fifth) 17

Elgin, J. & E. Ry. Co. v. *Burley*, 325 U. S. 711, 89 L. Ed. 1886, 65 S. Ct. 1282 ..... 12, 17

General Committee, B. L. E. v. *Missouri-K. T. R. Co.*, 320 U. S. 323, 88 L. Ed. 76, 64 S. Ct. 146 ..... 15, 16, 18

Steele v. *Louisville & N. R. Co.*, 323 U. S. 192, 89 L. Ed. 173, 65 S. Ct. 226 ..... 12, 13, 14

Switchmen's Union of North America v. *National Mediation Board*, 320 U. S. 297, 88 L. Ed. 61, 64 S. Ct. 95 ..... 10, 16, 17, 18

Tunstall v. *Brotherhood*, 323 U. S. 210, 89 L. Ed. 187, 65 S. Ct. 235 ..... 12, 17

Page

TABLE OF STATUTES CITED.

Railway Labor Act (45 U. S. C. 1946 ed. c. 8, § 151 et seq.; 44 Stat. 577 as amended by 48 Stat. 926, 1185, 49 Stat. 1921, and 54 Stat. 785, 786) ... 3, 6, 10, 11, 12, 15

45 U. S. C. 1946 ed., c. 8, § 152, Ninth 16
45 U. S. C. 1946 ed., c. 8, § 153, First 15
45 U. S. C. 1946 ed., c. 8, § 153, Second 3
45 U. S. C. 1946 ed., c. 8, § 184 3

28 U. S. C. 1948 ed., § 1254 (1) 6
28 U. S. C. 1948 ed., § 1337 10
28 U. S. C. 1948 ed., § 2101 (c) 6

IN THE

Supreme Court of the United States

OCTOBER TERM 1949

No.

CAPITAL AIRLINES, INC., *Petitioner,*

against

RICHARD I. EDWARDS and
JAMES A. YOUNG, *Respondents*

PETITION OF CAPITAL AIRLINES, INC. FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

The Petitioner, **Capital Airlines, Inc.**, respectfully prays that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above case on May 10, 1949, which judgment denied Capital Airlines' petition for rehearing and reaffirmed a judgment entered March 14, 1949.

Statement of the Matter Involved.

Petitioner Capital Airlines is an interstate air carrier.

Respondent Edwards was first employed by Capital as a probationary co-pilot on December 31, 1940. Subsequently, on November 1, 1941, the active employment of Edwards was discontinued by Capital under circumstances which later gave rise to a controversy as to whether Edwards had been "permanently severed" (and thus lost seniority rights) or had merely been "released due to reduction in force" (and thereby retained certain seniority rights).

Similarly, respondent Young was first employed by Capital as a probationary co-pilot on February 18, 1941. Later, on May 31, 1942, the active employment of Young was discontinued by Capital under circumstances which gave rise to a controversy as to whether he too had been "permanently severed" or had merely been "released due to reduction in force".

After such discontinuance of employment by Capital, both Edwards and Young entered upon active duty with the armed services of the United States. Upon their discharge, they applied to Capital for reemployment as pilots, and Capital gave them such employment, reinstating each upon the pilots' seniority list *with accrued seniority dating back to the date of original employment.* Edwards was thus reemployed beginning November 15, 1945, and Young was reemployed as of October 16, 1945.

Thereupon, eight other pilots whose seniority was affected by the reinstatement of Edwards and Young filed grievances with the Company, contending that both Edwards and Young had been permanently severed from the employment of Capital Airlines prior to the date of their entry into the armed services, and should therefore be treated as new employees with respect to seniority.

The protesting pilots were members of the Air Line Pilots Association, which is the authorized collective bargaining representative for the pilots employed by Capital Airlines. Edwards and Young were not members of the

Association, although they had applied for membership. Since the reinstatement of Edwards and Young affected the seniority of a great many pilots who were members, the Association filed with the Company a "group grievance". This matter was heard by Company officials, and the accrued seniority of Edwards and Young was upheld.

Thereafter, the Association presented the matter to Capital's System Board of Adjustment. This Board had been established as required by the federal Railway Labor Act, and under that Act, the Board had jurisdiction for "adjusting and *deciding*" disputes as to seniority (45 U. S. C. 1946 ed. c. 8, secs. 184 and 153 Second; 49 Stat. 1189 and 48 Stat. 1189). This jurisdiction of the Board was implemented by an agreement between Capital and the Association (as bargaining representative for Capital's pilots), and the agreement provides that *the awards of the Board as to seniority shall be "final and binding"* (R. 27).[1] The System Board consisted of two nominees of the Company and two nominees of the Association.

Both Edwards and Young were given full notice of the hearings and issues before the Board. Both were present personally and by counsel, and both had full and fair opportunity to present to the Board any evidence which they might deem proper. Both had full and fair opportunity to cross-examine and to controvert evidence which proved damaging to their causes. (R. 77, 78, 88, 98-102). The System Board of Adjustment received a very substantial amount of evidence with respect to the two cases, five volumes of transcript and 28 exhibits.

Upon the basis of all this evidence the System Board of Adjustment carefully prepared a written decision (R. 145-146; 148-149). *It held unanimously that Edwards and*

[1] Throughout this brief such references in parentheses refer to the pages of the printed record filed in this Court. On May 4, 1948 the name of Petitioner was legally changed from Pennsylvania-Central Airlines Corporation (as set forth in some parts of the record) to Capital Airlines, Inc.

Young had been "let go permanently" at the termination of the original periods of employment. Accordingly, the Board ordered Capital to conform to the collective bargaining agreement by affording Edwards and Young seniority only from the dates of their reemployment after the war (R. 149, 146).

Dissatisfied with the award of the System Board, Edwards and Young then filed complaints in the District Court for the District of Columbia. They alleged that they had been treated unfairly, and they sought an injunction to prevent Capital from abiding by the award of the System Board (R. 1-30; R. 45-51).

The two cases were consolidated and were fully tried in the District Court. *After trial the District Judge found in each case as follows:*

> "I find that plaintiff has exhausted any rights he conceivably had under the GI Bill of Rights.
>
> "*There is no evidence to indicate that the hearing before the System Adjustment Board was otherwise than fair. It was in no way prejudicial to plaintiff's rights. The decision of the Board is final, and binds this plaintiff.* Counsel for defendants will present for settlement Findings of Fact and Conclusions of Law consistent with this announcement, and a judgment form dismissing the complaint and dissolving the temporary restraining order and the preliminary injunction." (R. 40-41, 56)

Thus the District Court found, *as a fact,* that Edwards and Young had been fairly treated, and ruled that under such circumstances the award of the System Board is "final and binding".

On appeal to the United States Court of Appeals for the District of Columbia Circuit, the judgment of the trial court was reversed and the cause remanded with instructions (R. 192-200). In its opinion the Court of Appeals held:

1. Edwards and Young did not leave their employment with Capital "in order to perform such training and service" with the armed forces, and therefore they have no rights under the federal statutes relating to the reemployment of veterans (R. 193-194).

2. *The award of the System Board of Adjustment is subject to review de novo in the federal courts* because two members of the Board were nominees of the Pilots Association whereas Edwards and Young were not members of that Association (R. 196-199).

3. The Court of Appeals then made its own findings of fact on the merits of the controversy, finding that the two pilots had not been "permanently severed" from the employment of Capital but had merely been "released due to reduction in force" (R. 199-200).

Since the Court of Appeals was "not quite sure" of the exact meaning of the order of the System Board of Adjustment, it remanded the case for the ascertainment of the meaning of the award. The Court of Appeals ruled that the award of the Board must be held invalid unless it recognizes the seniority of Edwards and Young as found and decided by the Court of Appeals (R. 200).

Actually, the award of the System Board is clear, and the Court of Appeals has substituted its own findings of fact for the clear findings of the Board. The Board found that Edwards and Young had been "let go permanently" and therefore were entitled to seniority *only from the dates of their reemployment by Capital Airlines.* Thus the System Board applied section 23 of the collective bargaining agreement, which section provides for the forfeiture of seniority rights when pilots are permanently severed (R. 17). The Court of Appeals substituted its own findings of fact (that the two pilots had been released due to reduction in force), and ruled that Capital must afford Edwards and Young *additional seniority for the first periods of employment.*

Following the issuance of the original opinion of the Court of Appeals, Capital Airlines filed with that court a timely petition for rehearing and for modification of the decree. On May 10, 1949, the Court of Appeals issued a memorandum opinion denying the petition for rehearing, and entered its final judgment in the case. (R. 201 et seq.)

Jurisdictional Statement.

The jurisdiction of this Court is invoked under Title 28, United States Code 1948 ed., secs. 1254(1) and 2101(c).

Questions Presented.

1. When the Railway Labor Act has vested in the System Board of Adjustment full jurisdiction for "deciding" seniority disputes and for making "final and binding" awards in such disputes, and when the System Board has fairly decided such a dispute and has made its award, as in this case, do the federal courts nevertheless have jurisdiction to hear the dispute de novo and to substitute their findings of fact for those of the Board?

2. Even if it is decided that the federal courts do have jurisdiction to hear and decide such a case de novo, was the Court of Appeals for the District of Columbia Circuit correct in its application of the collective bargaining agreement?

Reasons for Allowance of the Writ.

1. The United States Court of Appeals for the District of Columbia Circuit has decided a question of substance relating to the construction of a statute of the United States (the Railway Labor Act), which question has not been, but should be, settled by this Court.

2. The United States Court of Appeals for the District of Columbia Circuit has not given proper effect to the applicable decisions of this Court.

3. The United States Court of Appeals for the District of Columbia Circuit has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

WHEREFORE, your Petitioner prays that a writ of certiorari issue under the seal of this Court, directed to the United States Court of Appeals for the District of Columbia Circuit with respect to the case entitled in its Docket Nos. 9989 and 9990 (Richard I. Edwards, Appellant v. Capital Airlines, Inc. and Air Line Pilots Association, Appellees; and James A. Young, Appellant v. Capital Airlines, Inc. and Air Line Pilots Association, Appellees) to the end that this cause may be reviewed and determined by this Court; and that the order of said Court of Appeals be reversed by this Court.

CHARLES H. MURCHISON
ROBERT B. HANKINS
JOSEPH K. GILLIGAN
Attorneys for Petitioner,
Capital Airlines, Inc.

STOCKTON, ULMER & MURCHISON
1016 Ring Building
Washington 6, D. C.
Of Counsel

IN THE

Supreme Court of the United States

OCTOBER TERM 1949

No.

CAPITAL AIRLINES, INC., *Petitioner,*

against

RICHARD I. EDWARDS and
JAMES A. YOUNG, *Respondents.*

BRIEF OF CAPITAL AIRLINES, INC., IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

The opinions of the Court of Appeals below are not yet reported but appear in the Record before this Court (R. 192 et seq.). The opinion of the District Court below also appears in the Record (R. 40, 56).

The statement of this Court's jurisdiction, and the statement of the case, have previously been set forth in the attached petition for writ of certiorari.

Specification of Errors.

I.

The Court of Appeals erred in reviewing a controversy which is not justiciable, and in substituting its own findings of fact for those of the System Board of Adjustment. The

Railway Labor Act conferred "final and binding" jurisdiction of seniority disputes upon the System Board. Congress did not intend that the federal courts should have power to review orders of the System Board in cases such as this one.

II.

Even if the Court of Appeals had power to decide the case of its merits, the Court erred in its ruling that the rights of Edwards and Young are governed by Section 27 (a) of the collective bargaining agreement, rather than by Section 23 as the System Board had determined.

Summary of Argument.

The Court of Appeals here made its own findings of fact, and a decision on the merits, in a case as to which it had no power whatsoever to take judicial cognizance. Section 1337 of the Judicial Code (28 U. S. C. 1948 ed., sec. 1337) gives the federal district courts "original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce". However, it was held in *Switchmen's Union of North America* v. *National Mediation Board,* 320 U. S. 297, that this statute which governs the general jurisdiction of the federal courts does not apply to controversies arising under the Railway Labor Act. Consequently, jurisdiction of the federal courts, if it exists at all, must stem from the Railway Labor Act itself.

Essentially, the question in issue here involves interpretation of the Railway Labor Act to determine whether it empowers the federal courts to review orders of the System Board of Adjustment. This System Board was established as required by Congress for the purpose of "adjusting and *deciding*" disputes involving seniority, and for making "final and binding" awards in such disputes. Careful examination of the Railway Labor Act, which the Court of Appeals below evidently neglected to make, shows the intent of Congress to keep judicial review

of the orders of the various settlement boards at a minimum. Instances wherein judicial review is allowed are clearly expressed. The instant case is not one of them.

Argument.

Jurisdiction of the federal courts over the controversy in issue is completely lacking since Congress vested complete and final authority to settle such controversies in the System Board of Adjustment.

The question of the justiciability of disputes involving the seniority of railroad and airline employees, which is the main issue here, has never been before this Court for decision. However, the justiciability of several other types of labor disputes arising under the Railway Labor Act has been denied by this Court for the very evident reason that the Act vested "final and binding" jurisdiction of such disputes in the various Boards created therein. Only in a few exceptional cases, which will be discussed in this brief, has this Court recognized the power of the federal courts to review orders of the various settlement Boards established by the Railway Labor Act.

True, Edwards and Young are non-members of the union which presented the grievance against their accrued seniority, but no trace of discrimination against them existed in any of the preliminary grievance hearings before Company officials, or subsequently at the hearing before the System Board of Adjustment. Actually, these hearings involved the rights of Edwards and Young only incidentally. The real controversy was between the Company and the Association. The Company vigorously upheld the accrued seniority of Edwards and Young while the Association contested this position. This the Association was entitled to do since the action of the Company in re-employing Edwards and Young with accrued seniority adversely affected the seniority of a great many other pilots.

Clearly, the Association had every right to protest an action on the part of the Company which the Association honestly deemed a violation of the labor agreement. It is the duty of the Association to protest and oppose all actions on the Company's part which appear to be a breach of the collective bargaining agreement. Whether Edwards or Young were members or non-members of the Association would make no practical difference in such a case. Neither Edwards nor Young had occasion to file grievances at any stage of the proceedings since neither one was aggrieved except by the final order of the System Board of Adjustment. Until that moment the Company's position was that of a powerful champion of Edwards and Young. Indeed, if the System Board had decided the case in favor of Edwards and Young, the other pilots might well have challenged the decision on the ground that the Company favored the two minority pilots. The reasoning of the court below would seem to require such an incongruous result.

In ruling that Edwards and Young were entitled to judicial review, the Court of Appeals cited the *Steele, Tunstall* and *Elgin* cases in support of its reasoning. *Steele* v. *Louisville & N. R. R.*, 323 U. S. 192, is in reality a boomerang since there this Court asserted the "final and binding" nature of the Adjustment Board's authority in matters involving interpretation of a labor agreement, which is exactly what Capital is contending in this proceeding.

The chief question in the *Steele case* was whether the Railway Labor Act imposes upon the exclusive bargaining representative the duty to represent all of the employees in the craft without discrimination because of their race, and if so, do the courts have authority to protect the minority of the craft or class from the violation of such obligation? In the *Steele case* the non-member minority was a group of negro firemen who were abused and demoted by the Company without even a pretense of notice

or a hearing. The rights protected by judicial review in that case were constitutional as well as statutory. Accordingly, in the *Steele case* it was held that the negro minority had "rights" which were enforcible by the federal courts. This Court stated:

> "In the absence of any available administrative remedy, the right here asserted, to a remedy for the breach of the statutory duty of the bargaining representative to represent and act for the members of a craft, is of judicial cognizance. That right would be sacrificed or obliterated if it were without the remedy which courts can give for breach of such a duty. . . . *The statutory provisions which are in issue are in the form of commands.* For the present command there is no mode of enforcement other than resort to the courts, whose jurisdiction and duty to afford a remedy for a breach of statutory duty are left unaffected" 323 U. S. at 207).

By contrast, all of the rights of Edwards and Young in the proceeding before the System Board of Adjustment were fully and fairly protected. No statutory "commands" were involved.

The Court of Appeals below concluded that "because the making of the award was in the hands of their active adversaries", Edwards and Young had the right to judicial review. There is no authority for such a principle of law in the *Steele case* or any other case. Furthermore, the Court below committed a factual error in concluding that the award was in the hands of the "active adversaries" of Edwards and Young. The record shows that the membership of the System Board of Adjustment consisted of two Company employees and two Union members. Since the Company had ruled in the preliminary proceedings that Edwards and Young were entitled to accrued seniority, and continued to take that position until overruled by the order of the System Board, it cannot fairly be said that the award of the System Board was in the hands of the "active adversaries" of Edwards and Young. The two

Company members cannot be presumed to have favored the Association's position in the matter. A contrary presumption would be more apt.

In the very question now before the Court, the *Steele* decision is contrary to the decision of the Court below. In the instant case the Court of Appeals' reversal was based upon what was asserted to be an error on the part of the System Board in construing certain sections of the collective bargaining agreement. The Court ruled that Section 27(a), rather than Section 23, of the collective bargaining agreement governed the rights of Edwards and Young. These sections provide as follows:

> "Sec. 23. Any pilot whose services with the Company are permanently severed shall forfeit his seniority right". (R. 17)
>
> "Sec. 27(a). A pilot who is released from the service of the Company due to reduction in force and is subsequently rehired shall retain his seniority to the time of release but shall not continue to accrue seniority after release unless and until he is reemployed. Such pilot, if he keeps the Company advised of his address, will be reemployed in the order of his seniority, provided the Company finds his flying ability and physical condition still meet the required standards. The right of preference in employment shall expire at the end of one year from the date of release". (R. 19)

It is evident, therefore, that the controversy over which the court below has asserted jurisdiction, is a controversy involving the interpretation of the collective bargaining agreement. In the *Steele case* all questions involving *interpretation of the collective bargaining agreement* were left to the expert judgment of the Adjustment Board. Federal jurisdiction over such matters was ruled out. This Court, summarizing various types of labor disputes which are non-justiciable, stated:

> "The question here presented is not one of a jurisdictional dispute, determinable under the administrative

scheme set up by the Act. . . . or restricted by the Act to voluntary settlement by recourse to the traditional implements of mediation, conciliation and arbitration. There is no question here of who is entitled to represent the craft, or who are members of it, issues which have been relegated for settlement to the mediation Board. . . . *Nor are there differences as to the interpretation of the contract which by the Act are committed to the jurisdiction of the Railroad Adjustment Board.*" (323 U. S. at 205)

The Act itself is explicit enough on this point. Section 153, First, (i) and (m), of the Railway Labor Act, confers upon the Adjustment Board final and binding jurisdiction over disputes "growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions". The dispute in the instant case, being a controversy between a group of employees and a carrier growing out of an interpretation of the collective bargaining agreement, clearly falls within the import of this Section.

This Court went very thoroughly into the question of justiciability of railroad labor disputes in *General Committee, B. L. E.* v. *Missouri-K. T. R. Co.*, 320 U. S. 323. That case, unlike the instant case, involved a jurisdictional dispute, but the reasoning of the Court is very illuminating. The District Court had decided the case on the merits, but this Court ruled that the Federal courts had no power under the Railway Labor Act to resolve the controversy. In tracing the history of the Act, this Court stated:

"In short, Congress by this legislation has freely employed the traditional instruments of mediation, conciliation and arbitration. Those instruments, in addition to the available economic weapons, remain unchanged in large areas of this railway labor field. *On only certain phases of this controversial subject has Congress utilized administrative or judicial machinery and invoked the compulsions of law.* Congress was dealing with a subject highly charged with emotion. Its approach has not only been slow; it has been

> piecemeal. Congress has been highly selective in its use of legal machinery. The delicacy of these problems has made it hesitant to go too fast or too far. The *inference is strong that Congress intended to go no further in its use of the processes of adjudication and litigation than the express provisions of the Act indicate.* (320 U. S. at 332-3).

If Congress did not select the courts to resolve jurisdictional disputes, neither did it select the courts to settle seniority disputes involving technical interpretation of a collective bargaining agreement. *To the contrary, it fashioned an administrative remedy, and vested final and binding jurisdiction over seniority disputes in the System Board of Adjustment.* The Railway Labor Act does not contain the slightest suggestion that disputes involving seniority may be reviewed by the federal courts. As this Court further stated in the *General Committee*, supra:

> *"In view of the pattern of this legislation and its history the command of the Act should be explicit and the purpose to afford a judicial remedy plain before an obligation enforcible in the courts should be implied. Unless that test is met the assumption must be that Congress fashioned a remedy available only in other tribunals. . . . Courts should not rush in where Congress has not chosen to tread"* (320 U. S. at 337)

In *Switchmen's Union* v. *National Mediation Board*, 320 U. S. 297, this Court also held that, lacking any specific provision for judicial review in the Act, labor disputes entrusted to settlement boards are non-justiciable. That case, like the *General Committee* case, involved a jurisdictional dispute. This Court ruled that the "right" of the majority of any craft to determine who shall be the representative of the craft is protected by Section 2, Ninth, of the Railway Labor Act, which Section gives the Mediation Board power to determine the issue. Since a proper administrative method has been determined by Congress to settle such questions, this Court ruled:

"review by the federal district courts of the Board's determination is not necessary to preserve or protect that 'right'. *Congress for reasons of its own decided upon the method for the protection of the 'right' which it created. It selected the precise machinery and fashioned the tool which it deemed suited to that end.* Whether the imposition of judicial review on top of the Mediation Board's administrative determination would strengthen that protection is a considerable question. *All constitutional questions aside, it is for Congress to decide how the rights which it creates shall be enforced. . . . In such a case the specification of one remedy normally excludes another*" (320 U. S. at 301)

By the same reasoning, in the instant case, the judicial review imposed by the Court of Appeals on top of the determination of the System Board of Adjustment was superfluous and unauthorized by law. All constitutional and statutory rights of Edwards and Young were fully protected by both parties to the dispute, and the hearing before the System Board was a model of fairness and thoroughness.

The two remaining United States Supreme Court cases cited by the court below lend no weight to the court's conclusion that the seniority dispute in the instant case could be judicially reviewed. The *Tunstall case* involved racial discrimination and the result was the same as in the *Steele case,* discussed supra. *Elgin, J. & E.* v. *Burley,* 325 U. S. 711, was so dissimilar to the instant case in the question involved that it is entitled to no consideration whatsoever. Careful study of all Supreme Court decisions on the point shows that the cases cited by the court below in support of its decision allowing judicial review state only the narrow exceptions to the general rule.

This question was carefully examined by the United States Circuit Court of Appeals, Fifth Circuit, in *Brotherhood of Railroad Trainmen* v. *Texas & P. Ry. Co.,* 159 F. (2d) 822, where the Court stated:

"In the Steele and Tunstall cases, the court fully recognized the broad scope and binding force of the *general rule as declared in the Switchmen's Union and the General Committee cases.* In sustaining the right of Steele and Tunstall to judicial relief, it took the greatest pains to point out that it sustained that right because, with the Union acting adversely on racial grounds to the very persons they were supposed to represent, the constitutional right of the plaintiffs not to be discriminated against would be sacrificed or obliterated if it were without the remedy which courts can give for breach of such an obligation." (159 F. (2d) at 826)

Since the ruling of the court below is in conflict with the general rule adopted by this Court in the *Switchmen's* and *General Committee* cases, a writ of certiorari should be granted.

CHARLES H. MURCHISON,
ROBERT B. HANKINS,
JOSEPH K. GILLIGAN,
Attorneys for Petitioner,
Capital Airlines, Inc.

STOCKTON, ULMER & MURCHISON,
1016 Ring Building,
Washington 6, D. C.,
Of Counsel.